SBCivil Writ Petition No.2519/2003

Nemichand Mahela
Vs.
State of Rajasthan & Anr.

Date of Order :: 9th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

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The Zila Parishad, Barmer under an advertisement No.10/98 invited applications from eligible candidates for the purpose of appointment to the post of Teacher Gr.III. In pursuant thereto the petitioner submitted an application, however, the petitioner could not be placed in merit as it was determined by giving bonus marks on basis of place of residence.

The number of persons including the petitioner challenged grant of such bonus marks while determining merit for appointment as Teacher Gr.III. The Full Bench of this Court in the case of Deepak Kumar v. State of Rajasthan, reported in 2000(1) WLC 1, held that grant of bonus marks on basis of place of residence is violative of Articles 14, 15 and 16 of the Constitution of India and, therefore, the same was declared illegal. The writ petition preferred by the petitioner was also accepted by this Court by judgment dated 14.11.2000 (Schedule-A with this writ petition) with following directions:-

> “The petition stands disposed of finally with the direction to consider the candidature of the petitioner by the respondent preferrably within a period of four weeks from the date of filing of certified copy of this order. Provided the select list is still in life, there is a vacancy and no selection has been made subsequent to the said advertisement in question. More so, there should be no candidate over and above him in the merit list who has not offered the appointment.”

A challenge was given to the Full Bench judgment of this Court given in the case of Deepak Kumar (supra) before Hon'ble Supreme Court but that too failed and the view taken by the Full Bench of this Court was affirmed.

It is pertinent to note that Hon'ble Supreme Court in the case of Kailash Chand Sharma v. State of Rajasthan & Ors., reported in JT 2002(5) SC 591, while affirming the Full Bench judgment of this Court in Deepak Kumar's case (supra) directed the State of Rajasthan and all other Zila Parishads to prepare the merit list afresh pertaining to the vacancies unfilled by taking into consideration candidature of the persons who approached the courts by filing writ petitions. In view of it, the Zila Parishad, Barmer was also required to prepare a fresh merit list by

taking into consideration the candidatures of the persons who approached this Court for determining their merit by withdrawing bonus marks granted to the local residents.

The grievance of the petitioner is that in spite of the directions given by Hon'ble Supreme Court the Zila Parishad, Barmer has not prepared fresh merit list and filled in the existing vacancies by continuing the persons having less merit than the petitioner.

No reply to the writ petition is filed by the respondents. With the consent of parties the matter is heard finally.

It is not at all in dispute that in the case of Kailash Chand Sharma (supra) Hon'ble Supreme Court while affirming Full Bench judgment of this Court in the case of Deepak Kumar (supra) directed the State of Rajasthan as well as various other Zila Parishads in State of Rajasthan to prepare a merit list afresh with regard to all existing vacancies by withdrawing the bonus marks granted on basis of place of residence.

In the instant matter the respondents have not acted upon in accordance with the directions given by Hon'ble Supreme Court. In view of it the claim made by the petitioner to consider his candidature for the

purpose of appointment as Teacher Gr.III against the existing vacancies is genuine.

Accordingly, this petition for writ is allowed. The respondents are directed to prepare a fresh merit list in accordance with the directions given by Hon'ble Supreme Court in the case of Kailash Chand Sharma (supra). The petitioner is also entitled to be considered for appointment and if he stands in merit, appointment be given to him as Teacher Gr.III.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.